

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D20464
X/kmg

_____AD3d_____

Argued - September 5, 2008

WILLIAM F. MASTRO, J.P.
PETER B. SKELOS
JOSEPH COVELLO
JOHN M. LEVENTHAL, JJ.

2007-09075

DECISION & ORDER

Victor J. Zupa, et al., respondents, v Paradise Point
Association, Inc., appellant, et al., defendant.

(Index No. 02-025843)

Esseks, Hefter & Angel, LLP, Riverhead, N.Y. (Stephen R. Angel and Anthony C. Pasca of counsel), for appellant.

Wickham, Bressler, Gordon & Geasa, P.C., Mattituck, N.Y. (Eric J. Bressler of counsel), for respondents.

Smith, Finkelstein, Lundberg, Isler & Yakaboski, LLP, Riverhead, N.Y. (Frank A. Isler of counsel), for defendant Town of Southold.

In an action, inter alia, for a permanent injunction, the defendant Paradise Point Association, Inc., appeals, as limited by its notice of appeal and brief, from so much of an order of the Supreme Court, Suffolk County (Weber, J.), dated August 29, 2007, as denied that branch of its cross motion which was for summary judgment dismissing the first and second causes of action insofar as asserted against it.

ORDERED that the order is affirmed insofar as appealed from, with costs to the respondents.

Contrary to the contention of the defendant Paradise Point Association, Inc. (hereinafter the Association), the plaintiffs' first and second causes of action are not barred by the

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principles of res judicata or collateral estoppel (*see generally Altegra Credit Co. v Tin Chu*, 29 AD3d 718; *Sterngass v Soffer*, 27 AD3d 549; *see also Fernandez v Cigna Prop. & Cas. Ins. Co.*, 188 AD2d 700; *Birnbaum v Birnbaum*, 182 AD2d 382).

The Association's remaining contentions are without merit.

MASTRO, J.P., SKELOS, COVELLO and LEVENTHAL, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court